

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY E. SMITH and U.S. POSTAL SERVICE,  
BOSTONIA STATION, El Cajon, CA

*Docket No. 03-598; Submitted on the Record;  
Issued July 9, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the effects of appellant's March 13, 1993 employment injury resolved by September 8, 1993.

On March 13, 1993 appellant, then a 44-year-old letter carrier, filed a claim for a traumatic injury to his neck and back, sustained on that date when his stopped postal vehicle was struck from behind. He was examined on March 13 and 15, 1993 by Dr. C.M. Briens, who diagnosed "cervicothoracic strain" and indicated that he could perform light work beginning March 15, 1993. Appellant stopped work on the date of his injury and returned to limited duty on March 15, 1993.

In an April 22, 1993 report, Dr. Briens noted appellant's complaint of pain near his left shoulder blade and in his low back, aching of the left leg down to the calf with prolonged walking, a burning sensation in the low back radiating to the front of his abdomen with prolonged standing and of headaches about once a day. He stated that appellant should continue modified duty and physical therapy and referred him to an orthopedic surgeon due to the persistence of his symptoms.

In a report dated May 5, 1993, Dr. Roger A. Freeman, a Board-certified orthopedic surgeon, noted appellant's complaints of intermittent neck stiffness, pain radiating into the left shoulder and down the arm, tingling of the hand, low back pain with activity and tingling and numbness in his left leg. Dr. Freeman described appellant's findings on physical examination and stated that x-rays of the lumbar, cervical and thoracic spine were normal. He diagnosed cervical strain and thoracolumbar strain and stated that appellant should continue with light duty and physiotherapy.

A lumbar magnetic resonance imaging (MRI) scan on June 9, 1993 was reported to show "[m]inimal early degenerative disease, L3-4 and L4-5 with mild bulges not affecting the thecal sac or exiting nerve roots."

In a report dated September 8, 1993, Dr. Freeman noted that appellant had resumed regular work activities, that he had only minimal symptoms in his lower back and that he had no stiffness in his neck, no headaches, no pain with prolonged standing or sneezing, no discomfort or pain radiating into his left arm or shoulder and no tingling or numbness in his left leg. On examination, cervical spine motion was full and pain free, sensation was intact in the upper and lower extremities, muscle strength was 5/5 in all upper and lower extremity muscles tested and straight leg raising was negative. Dr. Freeman diagnosed cervical strain syndrome and thoracolumbar strain and stated that there were no objective factors of permanent disability and that, the only subjective factor of permanent disability was “[i]ntermittent, minimal pain in the lower back with strenuous work activities.” He concluded that appellant could “resume his usual and customary work activities without restrictions or preclusions” and that he did “not require any supervised physiotherapy, chiropractic treatments or surgery at this time. However, he may require the occasional use of nonsteroidal anti-inflammatory medications on an as needed basis.”

On August 30, 1994 the Office of Workers’ Compensation Programs authorized a single reexamination of appellant by Dr. Freeman. In a report dated September 6, 1994, he noted appellant’s complaints of intermittent headaches, intermittent tingling in the hands, aching in the lower back and occasional tingling in the left foot. After describing his findings on physical examination, Dr. Freeman diagnosed cervical strain syndrome, thoracolumbar strain and degenerative disc disease of the lumbar spine. He concluded:

“In regards to the degenerative changes on the MRI study at L3-4 and L4-5, it is felt that [appellant’s] work injury transiently aggravated this condition but did not accelerate that process.

“It is felt that [appellant’s] current complaints are more likely the normal progression of degenerative disc disease in the lower back and is independent of the effects of the motor vehicular accident.

“It is not felt that [appellant’s] current condition is causally related to his original injury and is most likely secondary to the preexisting degenerative disc condition.”

By letter dated September 26, 1994, the Office advised appellant that further treatment was not authorized and that, if he disagreed, he should file a claim for a recurrence of disability.

On October 26, 1999 appellant filed a claim for a schedule award.

Appellant submitted a report dated August 2, 2000 from Dr. Antra Priede, Board-certified in preventive medicine and occupational medicine, and, who first examined him on July 28, 2000. This report set forth appellant’s history, reviewed prior medical reports and set forth his complaints and findings on physical examination. Dr. Priede diagnosed chronic lumbosacral strain and intermittent left sciatica and stated that appellant could “continue with his regular and customary duties regarding his back injury.”<sup>1</sup> He noted that the medical records

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<sup>1</sup> On January 13, 1999 appellant filed a claim for an occupational disease for an impingement syndrome of the right shoulder that he attributed to casing mail, lifting trays and delivering mail. The Office accepted a right shoulder impingement and rotator cuff tear, calcific tendinitis of the left shoulder and surgeries on both shoulders.

showed continued low back and left leg pain through 1995 and that appellant's "verbal history relates that he has continued to have pain in the back and left leg until the present time with minimal paresthesias, mostly tingling along the S1 distribution." Dr. Priede then concluded: "With no subsequent spine injury or injury to his hips or lower extremities, it is reasonable to conclude that the current disability is still causally related to his occupational injury of March 03, 1993."

An Office medical adviser concluded that application of the tables of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, to Dr. Priede's findings resulted in a 12 percent permanent impairment of the left leg.

By decision dated May 24, 2001, the Office found that the weight of the medical evidence established that appellant's conditions related to his March 13, 1993 employment injury had resolved. The Office denied his claim for a schedule award on the basis that he did not have a permanent impairment related to his March 13, 1993 employment injury.

By letter dated September 28, 2001, appellant requested reconsideration and submitted a report dated March 24, 1995 from Dr. Charles K. Jablecki, a Board-certified neurologist. He set forth appellant's history and noted his present complaints of pain throughout the left side of his body, numbness and tingling of his left arm, weakness of his left arm and occasional numbness of his left leg involving primarily the sole of his left foot. Dr. Jablecki described findings on examination, reviewed prior medical reports and in a separate report, noted that a nerve conduction study and electromyogram done on March 24, 1995 were normal. He diagnosed "[p]robable chronic cervical, thoracic and lumbosacral strain;" "[p]robable post-traumatic myofascial pain syndrome involving the posterior shoulder, left arm, posterior trunk, left low back and thigh;" "[p]ositional irritation left brachial plexus related to the chronic cervical strain (thoracic outlet syndrome);" "[p]robable post-traumatic lumbosacral root irritation, related to underlying degenerative lumbosacral spine disease;" "[h]emisensory deficit, give-way weakness in the left arm and leg, of the kind seen in patients with chronic pain and without other localizing neurological significance;" and "[p]resence of Waddell signs consistent with some symptom amplification." Dr. Jablecki then stated that forceful contraction of his muscles, which appellant did in anticipation of the March 13, 1993 collision, "can cause injury to the muscle tendon unit in addition to that seen with the direct trauma" and that appellant had neurological symptoms of numbness and tingling of the left arm and left leg "within days of the injury. The fact that the sensory symptoms came on within a short time after the initial injury is strong evidence that they were caused by the trauma of the motor vehicle accident as well." Dr. Jablecki then explained why thoracic outlet syndrome rather than cervical radiculopathy was diagnosed and stated: "Thoracic outlet syndrome can develop following strain injuries in the cervical area. Because of dysfunctional use of the left shoulder, subsequent irritation of the neurovascular structures in the thoracic outlet can develop following strain injuries in the cervical area." Dr. Jablecki stated that he believed appellant had a myofascial pain syndrome because of the persistence of his symptomatology and because most strain conditions resolve within a few months with minimal residual and that, despite some signs of symptom amplification, it was his medical opinion that there was an organic pain syndrome. He set forth work restrictions due to the diagnosed conditions and stated that "the myofascial pain problem developed as a complication of his work injury" and that, "[b]ut for that motor vehicle accident, there is no reason to believe he would

have developed a cervical strain, lumbar strain, chronic myofascial pain syndrome and intermittent numbness and tingling of the left arm and leg.”

On November 16, 2001 the Office referred appellant, a statement of accepted facts and prior medical records to Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, for a second opinion of whether he had residuals of his March 13, 1993 employment injury.

In a report dated December 6, 2001, Dr. Dorsey set forth appellant’s history and his complaints of bilateral shoulder pain, upper extremity numbness, low back pain radiating to the foot and looseness, clicking and popping of the knees. He reviewed the prior medical reports, noting that “electrodiagnostic studies by Dr. Jablecki show no evidence of neurological involvement in the cervical, thoracic or lumbar areas.” After noting that musculoligamentous sprains or strains typically resolve within 4 to 12 weeks, Dr. Dorsey concluded:

“There is no basis on which to believe that there were any residuals of the March 13, 1993 injury on or after September 8, 1993. As indicated above, in my opinion, there are no residuals at this time of the March 13, 1993 episode, because this would have resulted only in cervical, thoracic and lumbar musculoligamentous sprains/strains, which have gone on to resolution. There is no basis on which to believe that there would be any residuals on or after September 8, 1993, because of the known timeframe of resolution of such conditions. The basis for this opinion is [that appellant’s] history, physical examination and review of medical records, which indicate no evidence of any objective change of [his] anatomy as a result of the events of March 13, 1993.”

By decision dated January 2, 2002, the Office found that modification of its prior decision was not warranted.

The Board finds that the weight of the medical evidence establishes that the effects of appellant’s March 13, 1993 employment injury resolved by September 8, 1993.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup>

In a September 8, 1993 report, Dr. Freeman, a Board-certified orthopedic surgeon, who first examined appellant on May 5, 1993 concluded that his cervical, thoracic and lumbar strains, the conditions accepted by the Office, had resolved. His opinion was based on appellant’s resumption of regular work activities with minimal symptoms of the low back with lifting very heavy objects, on the absence of pain radiating into the left arm and of tingling and numbness in the left leg that he previously had and on his examination of appellant, which revealed no objective findings of disability. In a September 8, 1994 report, Dr. Freeman concluded that

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<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

appellant's condition was not causally related to his March 13, 1993 employment injury and attributed it instead to the normal progression of his preexisting degenerative disc condition seen on an MRI. These reports are sufficient to establish that the effects of appellant's March 13, 1993 employment injury resolved by September 8, 1993.

The reports of Drs. Priede and Jablecki indicated that appellant had continuing residuals of the March 13, 1993 employment injury. The only explanation provided in Dr. Priede's August 11, 2000 report was, that it was "reasonable to conclude" that appellant's current condition was still related to his March 13, 1993 injury because he sustained no subsequent injury. Dr. Priede did not explain how the diagnosed chronic lumbosacral strain continued for over seven years or address the effects of the degenerative disease shown on a June 9, 1993 MRI.

The March 24, 1995 report from Dr. Jablecki was speculative on causal relation. He stated that forceful contraction of muscles, such as appellant did just before his vehicle was struck from behind, "can cause injury to the muscle tendon unit" and that thoracic outlet syndrome "can develop following strain injuries in the cervical area," but did not explain how these scenarios applied to appellant. Moreover, Dr. Jablecki based his opinion on causal relation on a history not substantiated by the record; that appellant experienced neurological symptoms of numbness and tingling of the left arm and left leg "within days of the injury." Medical reports dated March 18 and 22 and April 6, 7 and 20, 1993 contain no mention of any neurological symptoms. The earliest report that indicates any symptoms that could be considered neurological is dated April 22, 1993, over five weeks after the March 13, 1993 injury. Dr. Jablecki also did not address the significance of his own nerve conduction study and electromyogram, which he indicated were normal. His report is insufficient to establish continuing residuals of the March 13, 1993 employment injury.

After appellant first submitted Dr. Jablecki's report with his September 28, 2001 request for reconsideration, the Office referred appellant to Dr. Dorsey for a second opinion, whether he still had residuals of his March 13, 1993 employment injury, Dr. Dorsey concluded that he did not and explained that appellant sustained only musculoligamentous strains, as shown by the absence of evidence of neurological involvement of the left arm or left leg, including the normal electrodiagnostic studies by Dr. Jablecki.

The weight of the medical evidence establishes that the effects of appellant's March 13, 1993 employment injury resolved by September 8, 1993.

The January 2, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
July 9, 2003

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member